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July 13, 2004



Writer's Direct Number: (317) 236-2100  
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**MAIL STOP: MISSING PARTS**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on 07-13-2004.

(Date of Deposit)

Ratti D. Bateliff  
Printed or Typed Name of the Person Signing the Certificate

Ratti D. Bateliff  
Signature

July 13 2004  
Date of Signature

Re:   Invention:   MIXING VALVE  
      Inventor:   KLINE, Kevin B.  
      Serial No.: 10/783,502  
      Art Unit:   3753  
      Filed:      February 20, 2004  
      Our File No.: P00799-US-01 (20680.0001)

**RESPONSE TO NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION UNDER 37 C.F.R. § 1.47**

In conformance with MPEP § 409.03 *et seq.*, Applicant respectfully submits the following information in response to the Notice of Missing Parts for the above-referenced patent application:

1. Information supporting the conclusion that the inventor's conduct represents a refusal to sign patent application papers under 37 C.F.R. § 1.47;
2. Inventor's last known address;
3. Proof of Applicant's proprietary interest in the application; and
4. Proof of irreparable damage to the application if Applicant is not allowed to proceed under 37 C.F.R. § 1.47.

Applicant respectfully requests that the above-referenced application be allowed to proceed to examination without the inventor's signature, under 37 C.F.R. § 1.47.

### **Inventor's Refusal**

Applicant and the inventor of the above-referenced invention have been involved in a long history of litigation involving the infringement of specific patents owned by Applicant. Applicant filed a Patent Cooperation Treaty application for the current invention, and provided a copy of the application to the inventor to request comments. The application was received by the inventor on or about August 12, 2002. Applicant also provided a declaration to the inventor for the inventor to sign, received by the inventor on or about October 17, 2002. The inventor has not commented on the application to this date, and did not sign the Request as of the date of the Response in the PCT proceedings. The inventor and has provided a letter stating his preference against further involvement with the application.

Applicant petitioned the PCT Office to consider the above facts and determine that the inventor has "refused" to sign the Request, to allow Applicant to proceed without the inventor's signature under PCT Rule 4.15(b) and in accordance with 37 C.F.R. § 1.425. A copy of the petition, is attached hereto as Exhibit A. Exhibit A also contains all accompanying exhibits of the petition, including the inventor's response letter to Applicant and the undersigned's communications to the inventor and/or his counsel. The PCT Office, in a "Decision on Papers Under 37 C.F.R. § 1.425," favorably considered Applicant's arguments, and allowed the PCT application to proceed without the inventor's signature. A copy of the PCT Office Response is attached hereto as Exhibit B.

Applicant respectfully asserts that the above-referenced application is simply the nationalization of the PCT application discussed above. Because the national and international applications are identical, and the inventor still has not signed the papers from the PCT application, Applicant respectfully requests that the above-referenced US patent application be allowed to proceed to examination without the inventor's signature.

**Inventor's Last Known Address**

The inventor's last known personal and his counsel's mailing addresses are provided as follows:

**Inventor:**

Kevin B. Kline  
800 E. Henry Clay Street  
Milwaukee, WI 53217

**Counsel:**

Kathleen Lee, Esq.  
BOSE McKINNEY & EVANS  
135 North Pennsylvania Street  
2700 First Indiana Plaza  
Indianapolis, Indiana 46204

**Applicant's Proprietary Interest**

Applicant respectfully submits Exhibit C, which contains a redacted settlement agreement between the inventor named in the above-referenced patent application and Applicant. Applicant respectfully asserts that the settlement agreement is clear and convincing proof of the inventor's assignment to Applicant of the full rights over the invention disclosed in the above-referenced patent application.

**Irreparable Damage**

The above-referenced patent application is the United States nationalization of a patent filed under the Patent Cooperation Treaty. In a Notice of Missing Parts, the Patent and Trademark Office noted that a signed Oath or Declaration was not submitted with the initial application, and required that such a statement be executed. The Patent and Trademark Office allowed a two month shortened statutory period to reply, ending July 13, 2004.

If Applicant is not allowed to perfect patent rights on behalf of the unwilling inventor, then the statutory period to reply to the Patent and Trademark Office will expire, and the application will become abandoned. Thus, Applicant respectfully submits that a failure to act in a timely manner to submit the application on behalf of the unwilling inventor will cause the application to become abandoned, which will cause irreparable damage.

**Conclusion**

In sum, Applicant respectfully submits that the inventor of the invention disclosed in the above-referenced patent application has refused to perfect patent rights. Further, Applicant has

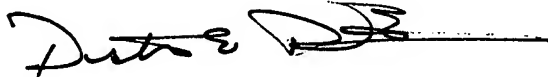
July 13, 2004

shown that the inventor has assigned all rights over the invention to Applicant, and also that irreparable damage will result from a failure to act in a timely manner with regard to the application. Therefore, Applicant respectfully requests that the above-referenced patent application be allowed to proceed without the inventor's signature as provided under 37 C.F.R. § 1.47.

In the event Applicant has inadvertently overlooked the need for payment of a fee, Applicant hereby conditionally petitions therefore and authorizes that any such charges be made to Deposit Account 09-0007. In the event the examiner must charge the Deposit Account, Applicant respectfully requests that the examiner reference our File No. P00799-US-01.

Respectfully Submitted,

ICE MILLER



Dustin S. DuBois, Attorney No. 46,233  
One American Square, Box 82001  
Indianapolis, Indiana 46282-0002  
Telephone: (317) 236-2100

Date: July 13, 2004

Enclosures: Exhibit A – Petition under 37 CFR § 1.425 Filed with the PCT Office  
and communications  
Exhibit B – Response from the PCT Office Regarding Petition Exhibit A  
Exhibit C – Redacted Settlement Agreement  
Copy of Notice to File Missing Parts of Nonprovisional Application  
Return Postcard

cc: Steven Ferucci, Esq. (w/enclosures)  
1395080



THE UNITED STATES PATENT &  
TRADEMARK OFFICE

Applicant's file reference: P00799W000 }  
International Application No.: PCT/US02/27056 }  
Applicant: Lawler Manufacturing Co., Inc. }  
Inventor: Kevin B. Kline }  
Invention: MIXING VALVE }  
Filing Date: August 23, 2002 (23.08.02) }  
Earliest Priority Date: August 24, 2001 (24.08.01) }

Certificate Under C.F.R. 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450 on June 23, 2003.

(Date of Deposit)

NANCY J EMANIS

Printed or Typed Name of the Person Signing the Certificate

Nancy J Emanis

Signature

6-23-03

Date of Signature

PETITION UNDER 37 C.F.R. §1.425

Mail Stop PCT

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This is a Petition under 37 C.F.R. §1.425 to excuse the signature of an applicant inventor for refusal by him to sign the Request. An earlier-filed petition is attached as Exhibit 1 for convenient reference.

Applicant wishes to focus the attention of the Examiner, briefly, to certain relevant information relating to Applicant (U.S. only) and Sole inventor Kevin B. Kline's failure to sign the Request for the above referenced application.

Applicant Lawler Manufacturing Co., Inc. ("Applicant Lawler"), Kevin B. Kline (the sole inventor) and Mr. Kline's present employer ("Bradley") have been engaged in litigation over the past several years relating to infringement of specific patents owned by Applicant Lawler. Mr. Kline formerly was an employee of Applicant Lawler and is now employed by Bradley. Without providing too detailed information, the backdrop of the relationship between Mr. Kline and Applicant Lawler, from the perspective of Lawler, is not a friendly one. A lawsuit brought against Mr. Kline personally and Bradley resulted,

after considerable litigation expense, in a settlement agreement between Lawler, Mr. Kline, and Bradley. In this settlement agreement, Applicant Lawler was assigned the rights to specific subject matter, some of which forms the basis for the above referenced PCT application.

Prior to filing the patent application, the undersigned ("Agent") provided to Mr. Kline through counsel copies of the proposed PCT application to be filed. Mr. Kline did not sign the Request which was received by him on October 17, 2002. Mr. Kline had initially received the patent application on or before August 12, 2002, and had been informed through counsel that all of the documents relating to the application did not need to be signed at the time of filing. Mr. Kline then obtained personal counsel and communicated through such counsel to the undersigned that, if Applicant Lawler could proceed without his involvement, that was Mr. Kline's preference. Mr. Kline then drafted a letter to Agent and repeated his consultation with his counsel. Although in the letter Mr. Kline indicates specific 'deadlines' and his appreciation for any notice and opportunity to 'rectify' the situation if Applicant Lawler deemed it a breach of his obligations of the settlement agreement, the fact is Mr. Kline has, even upon the advice of counsel, not signed the Request.

Because Mr. Kline has not signed the request, and he was presented with the Request and given the opportunity to sign it, Applicant Lawler respectfully requests the Examiner find that Mr. Kline has "refused" to sign the Request and excuse his signature in accordance with PCT Rule 4.15(b) and in accordance with 37 C.F.R. §1.425. Applicant offers that a "refusal" does not require any specific comment from Mr. Kline, but rather the determination of whether Mr. Kline has "refused" to sign the Request should require consideration of Mr. Kline's actions or inactions. Mr. Kline has sought the advice of counsel to determine his obligations, and has failed to this date to sign the Request or in any other way cooperate with Agent or Applicant Lawler regarding the filing of the present application or papers relating thereto. Mr. Kline remains in possession, to Applicant Lawler's knowledge, of the application papers, the Request, and other documents forwarded for his review, comment and signature.

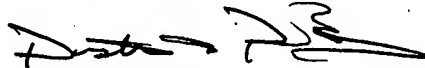
Given the backdrop of the litigious history Applicant Lawler has with Mr. Kline and his present employer, Bradley, Applicant Lawler requests the Examiner to reconsider

the letter from Mr. Kline and its impact on the present petition. Applicant urges the Examiner to give greater weight to the facts that Mr. Kline has to this day failed to provide any commentary on the application to Agent or Applicant Lawler, and has failed to sign the Request, and lesser weight to the arguably self-serving comments Mr. Kline formulated in his letter of November 1, 2002.

If the Examiner believes that other information would be helpful or that a discussion regarding the content of this Petition would be beneficial, please contact the undersigned at (317)-236-2251.

No fee is believed to be due in connection with this matter; however, if any fee is due in connection with the submission of this petition, please charge undersigned's deposit account number 09-0007 in the name of ICE MILLER, with reference to our matter number 20680-0001.

Respectfully Submitted,  
ICE MILLER



Dustin S. DuBois  
(317) 236-2251  
[dubois@icemiller.com](mailto:dubois@icemiller.com)  
U.S. Reg. # 46,233

DSD:nje  
Attachments





**Date of Mailing: June 23, 2003**  
**First Class Mail**

**Re: Inventor: Kevin B. Kline**  
**In Re Application of: Lawler Manufacturing Co., Inc.**

**Invention: MIXING VALVE**  
**Filed: August 23, 2003**

**Our File No.: P00799W000 (20680.0001)**

**XX Transmittal of Petition Under C.F.R. §1.425**  
**XX Attachment 1 Petition under 37 CFR 1.425**  
**XX Return Postcard**



**Dustin DuBois, Esq**  
**ICE MILLER**  
**One American Square, Box 82001**  
**Indianapolis, IN 46282-0002**



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

11 South Meridian Street  
Indianapolis, IN 46204-3535  
(317) 236-1313

Attorney  
Docket: 8915-71250  
  
Applicants: LAWLER MANUFACTURING  
CO., INC., et al  
  
Invention: Mixing Valve  
  
Serial No.: PCT/US02/27056  
  
Filed: 23 August 2002 (23.08.02)  
  
Earliest  
Priority Date: 24 August 2001 (24.08.01)

Certificate Under 37 CFR 1.10

Express Mail No.: EV 036 288 045 US  
Date of Deposit: 13 January 2003 (13.01.03)

I hereby certify that this correspondence is being deposited with the United States Postal Service's "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date above and is addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231

Heather L. Behlmer

Typed or Printed Name of Person Mailing Paper or Fee

Heather L. Behlmer  
Signature of Person Mailing Paper or Fee

SN5408829E0A3

PETITION UNDER 37 CFR 1.425

Attention: RO/US  
Box PCT  
Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

On 12 September 2002 an Invitation to Correct Defects in the International Application was mailed from the Receiving Office of the United States Patent and Trademark Office. In the Invitation, a Power of Attorney and formal drawings were requested. In response to that Invitation, Agents for the Applicants, on December 20, 2002, submitted proposed replacement sheets of drawings and requested an additional one-month period of time to satisfy the signature requirement. Applicant Lawler Manufacturing Co., Inc. now petitions for the requirement for inventor Kevin B. Kline's signature to be excused.

The subject matter of the above-referenced matter was assigned to Applicant, Lawler Manufacturing Co., Inc., as part of a settlement agreement for a litigation matter. Inventor Kevin B. Kline was an opposing party and is an employee of another opposing party.

Signature documents were originally sent on August 13, 2002 to Applicant/Inventor Kevin B. Kline's attorneys at Foley & Lardner in Milwaukee, Wisconsin. These documents were again forwarded to Foley & Lardner on September 3<sup>rd</sup> and 23<sup>rd</sup> 2002. Attorneys at Foley &

EXHIBIT

1

Lardner originally proceeded as if they represented Mr. Kline and represented to us that the documents were forwarded to Mr. Kline. However, on October 8, 2002, we learned through a telephone conference call that Foley & Lardner was taking the position that it no longer represented Mr. Kline "personally," and only represented his current employer, Bradley Corporation. Therefore, on October 15, 2002 correspondence was sent directly to Mr. Kline requesting that he sign the papers for the present PCT application. If Mr. Kline were unwilling to sign the documents, he was requested to date and sign a "Notice of Unwillingness to Execute Documents."

Kevin Kline responded in a letter dated November 1, 2002 informing Barnes & Thornburg that he had received our package of October 15<sup>th</sup>, that he had hired new counsel and that he did not intend to sign any papers (Exhibit "A"). This letter from Mr. Kline demonstrates his refusal to sign the Power of Attorney documents. The requirement for Mr. Kline's signature should be excused.

Because of Mr. Kline's refusal to sign papers (the PCT Request, etc.), Agents for the Applicant, Lawler Manufacturing Co., Inc., respectfully request that the requirement for Kevin B. Kline's signature be excused. The enclosed copy of the "Excerpts from Settlement Agreement" recorded in the United States Patent Office on August 24, 2001, Reel 012122, Frames 0304-0314 against the priority case, U.S. Provisional Patent No. 60/314,803, filed August 24, 2001 (Exhibit "B"), is evidence of our authority to proceed in this manner.

Respectfully submitted,



Jill T. Powlick  
Agent for Applicants

JTP/hzs/557965  
Enclosures

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT, made this 5 day of March, 2001, by and between Lawler Manufacturing Co., Inc., an Indiana corporation, with its principal place of business at 600 East Ohio Street, Indianapolis, Indiana 46204 (hereinafter "Lawler"), Bradley Corporation, a Wisconsin corporation with its principal place of business at W142 N9101 Fountain Blvd., Menomonee Falls, Wisconsin 53052-0309 (hereinafter "Bradley"), Kevin B. Kline, a Wisconsin resident residing at 800 East Henry Street, Apt. 101, Whitefish Bay, Wisconsin 53217 (hereinafter "Kline"), and Aspinall Associates, Inc., an Indiana corporation with its principal place of business at 6840 Hillsdale Court, Indianapolis, Indiana 46250 (hereinafter "Aspinall").

### WITNESSETH

WHEREAS Lawler has brought suit against Bradley and Kline in the United States District Court for the Southern District of Indiana for willful infringement of U.S. Patent No. 5,323,960 ("the '960 Patent") and U.S. Patent No. 5,647,531 ("the '531 Patent"), and for breach of fiduciary duty, inducement to breach fiduciary duty, conversion, misappropriation of trade secrets, diversion of corporate opportunities, negligence, unjust enrichment, common law unfair competition, and trade dress/trademark infringement under the Lanham Act, in the case captioned *Lawler Manufacturing Co., Inc. v. Bradley Corporation and Kevin B. Kline*, Case No. IP98-1660- C-M/S; and

WHEREAS Lawler has brought suit against Aspinall, Bradley's distributor, in the United States District Court for the Southern District of Indiana for willful infringement of the '960 Patent and the '531 Patent, in the case captioned *Lawler Manufacturing Co., Inc. v. Aspinall Associates, Inc.*, Case No. IP00-1638-C-B/S (hereinafter collectively called "the Lawsuits");

WHEREAS, Bradley, Kline and Aspinall have answered the Complaints in these Lawsuits and denied any wrongdoing; and

WHEREAS Lawler, Bradley, Kline, and Aspinall have mutually agreed to settle the claims alleged in the Lawsuits, as well as all other claims, both known and unknown, that might have arisen between them prior to the date of this Settlement Agreement, on the terms and conditions hereinafter set forth.

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8. Kline agrees to execute, simultaneous with this Settlement Agreement, the Confidentiality Agreement attached hereto as Addendum D, and made a part of this Settlement Agreement, acknowledging that he had created and otherwise had access to trade secrets and confidential information, including without limitation, marketing information, owned by Lawler during his eight (8) years of employment as an officer, director and one of two or three shareholders of Lawler, and agreeing to maintain such trade secrets and confidential information confidential and not use, or disclose to third parties, such trade secrets and confidential information except only within Bradley for the purpose of performing on behalf of Bradley under the License Agreement with Lawler attached hereto as Addendum A. Kline acknowledges that the engineering drawings and other technical information received by Lawler from its predecessor, ITT and its subsidiaries, and the

engineering drawings and other technical and marketing information created by him or others during his employment by Lawler, set forth trade secrets and confidential information owned by Lawler, and represents and warrants to Lawler that he does not have in his possession or otherwise have access to copies of said engineering drawings of Lawler.

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